

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2971 of 2017
and C.M.P.No.17413 of 2017

K.Jayakumar .. Appellant/Respondent/petitioner/husband

Vs

M.Sainithya .. Respondent/petitioner/Respondent/wife

Civil Miscellaneous Appeal preferred under Section 19 of the Family Courts Act, 1984, against the fair and decreetal order dated 18.04.2017 made in I.A.No.1154 of 2016 in O.P.No.247 of 2015 on the file of the II Additional Family Court, Chennai.

For Appellant : Mr.A.L.Rajaraman
For Respondent : Ms.E.Maragathasundari
for Mr.R.S.Mohan

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed against the order dated 18.04.2017, passed in I.A.No.1154 of 2016 in O.P.No.247 of 2015, by the II Additional Family Court, Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.247 of 2015, on the file of the trial Court, for getting dissolution of marriage, wherein, the present respondent has been arrayed as sole respondent. During pendency of the same, the respondent, as petitioner, has filed I.A.No.1154 of 2016 on the file of the trial Court, under Section 24 of the Hindu Marriage Act, 1955, praying to pass an interim monthly maintenance of Rs.30,000/- towards her maintenance as well as her child.

3.The trial Court, after considering the divergent submissions made on either side, has partly allowed the petition and thereby, directed the respondent to give a sum of Rs.8,000/- per mensem, by way of passing the impugned order and the same is

being challenged in the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the appellant/respondent has contended to the effect that the appellant is not having sufficient means to pay interim monthly maintenance of Rs.8,000/- per mensem and to that effect, a detailed counter has been filed. The trial Court, without considering the averments made in the counter, has erroneously directed the appellant/respondent to pay interim monthly maintenance of Rs.8,000/- by way of passing the impugned order and the same is liable to be set aside.

5.Per contra, the learned counsel appearing for the respondent/ petitioner has contended that the respondent/petitioner is not having sufficient wherewithal so as to maintain herself and also her child. Under the said circumstances, as per Section 24 of the Hindu Marriage Act, 1955, I.A.No.1154 of 2016 has been filed and the trial Court, after considering the available evidence on record, has rightly directed the appellant/respondent to pay interim monthly maintenance of Rs.8,000/- by way of passing the impugned order and the same does not require any interference.

6.It is an admitted fact that the appellant/respondent, as petitioner, has filed O.P.No.247 of 2015 under Section 13[1][i-a] and [i-b] of Hindu Marriage Act, 1955, so as to dissolve the marriage between him and respondent. During pendency of the same, the present petition has been filed in I.A.No.1154 of 2016 under Section 24 of the Hindu Marriage Act, 1955.

7.The only defence taken on the side of the appellant/respondent is that he is not having sufficient means to pay interim monthly maintenance of Rs.8,000/- as directed by the trial Court.

8.As pointed out earlier, it is an admitted fact that the respondent/petitioner is the legally wedded wife of the appellant/ respondent. Further, both of them have been blessed with a child and now, the same is under the custody of the respondent/petitioner.

9.Since the respondent/petitioner has filed I.A.No.1154 of 2016 under Section 24 of the Hindu Marriage Act, 1955 and since she is having custody of her child, the defence taken on the side of the appellant/respondent cannot be accepted. Further, on the side of the appellant/respondent, it has not been established to the effect that the respondent/petitioner is having sufficient means to maintain herself as well as her child.

10.Considering the aforesaid factual aspects and also considering the fact that the respondent/petitioner is not having sufficient means to maintain herself and her child, the trial Court, has rightly awarded interim monthly maintenance at Rs.8,000/- per mensem. In view of the discussion made earlier, this Court does not find any error of illegality in the order passed by the trial Court and therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

11.In fine, this Civil Miscellaneous Appeal is dismissed without cost. The order passed in I.A.No.1154 of 2016 in O.P.No.247 of 2015 by the II Additional Family Court, Chennai, is confirmed. However, the II Additional Family Court, Chennai is directed to dispose of O.P.No.247 of 2015 before the end of December 2017 and report the same to the Registry without fail. Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To
The III Additional II Additional Family Court,
Chennai.

+1cc to Mr.RajaRaman Advocate, S.R.No. 76781

+1cc to Mr.R.S.Mohan Advocate, S.R.No. 76997

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